

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3-PLR-143145-01

Date:

July 16, 2002

In Re:

LEGEND

X =

Y =

Year =

:

This letter responds to your submission dated August 10, 2001, and subsequent correspondence, submitted on behalf of X and Y requesting a ruling that X and Y be given an extension of time to make the election under section 469(c)(7) of the Internal Revenue Code and section 1.469-9(g)(3) of the Income Tax Regulations to treat all interests in rental real estate as a single rental real estate activity.

FACTS

According to the information submitted, X and Y are married individuals who filed their tax returns jointly. X represents that in Year, he was in a real property business as defined by section 469, and was qualified to make an election under section 469(c)(7)(B) to treat all of his interests in rental real estate as a single rental real estate activity. However, X inadvertently failed to include the statement required by section 1.469-9(g)(3) with the joint return filed for Year. X and Y seek relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for the late election.

LAW AND ANALYSIS

Under section 469(c)(2), the term "passive activity" generally includes any rental activity. Section 469(c)(7) provides a limited exception to this rule for taxpayers in a real property business. Specifically, section 469(c)(7)(A) indicates that if a taxpayer meets the requirements of section 469(c)(7)(B), the taxpayer's rental real estate activity will no longer be presumptively passive. By its terms, the exception under section 469(c)(7)(A) is to be applied as if each interest of the taxpayer in rental real estate were a separate activity. However, a taxpayer may elect to treat all interests in rental real estate as a single activity.

Section 1.469-9(g)(3) provides that a qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental real estate activity by filing a statement with the taxpayer's original income tax return for the taxable year. Section 1.469-9(g)(3) describes the information that must be contained in the statement.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

CONCLUSION

In the present situation, the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Therefore, X and Y are granted an extension of time until 60 days following the date of this letter to make the election under section 469(c)(7)(A) to treat all interests in rental real estate as a single activity effective Year. The election must be in the form of the statement required by section 1.469-9(g)(3) and attached to their amended return for Year. A copy of this letter should be attached to the election and is included for that purpose.

Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the transaction described above under any other

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provision of the Code. Specifically, no opinion is expressed concerning whether X meets the requirements of section 469(c)(7)(B) or whether X materially participates in any activity.

This ruling is directed only to the taxpayers on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a Power of Attorney on file with this office, we are sending a copy of this letter to X and Y.

Sincerely,

/s/

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes.

cc: